U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUN 1 1 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed an untimely appeal, which the director treated as a motion to reopen. The director again denied the petition. The petitioner filed an untimely motion to reopen that decision, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time the petitioner filed the petition, he was a postdoctoral researcher at [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Attorney [redacted] represented the petitioner at the time of the petition's filing. The record, however, contains no sign of the attorney's subsequent involvement in the proceeding. The attorney did not prepare or sign any of the three Form I-290B Notices of Appeal or Motion in the record; the petitioner's personal statements on appeal and motion include no mention of legal representation; and the petitioner mailed every appeal and motion from his own address. Form I-290B advises that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. Therefore, the record contains no indication that [redacted] is still the petitioner's attorney of record, and several indications that he is not. The AAO will therefore consider the petitioner to be self-represented.

The petitioner filed the Form I-140 petition on January 30, 2008. The director denied the petition on October 1, 2008, stating that the petitioner had not established eligibility for a waiver of the statutory job offer requirement in the national interest.

The petitioner filed an appeal on January 9, 2009. The appeal was untimely; under the U.S. Citizenship and Immigration Services (USCIS) regulations then in effect at 8 C.F.R. §§ 103.3(a)(2)(i) and 103.5a(b), the appeal deadline was November 3, 2008, 33 days after the denial date.

The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The director treated the late appeal as a motion, and issued a new decision on February 4, 2009, and concluded that the petitioner had not overcome the grounds for denial of the petition.

On August 22, 2011, the petitioner filed a motion to reopen the proceeding. The USCIS regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

> Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The director found that the petitioner had not shown that the two and a half year delay in filing the motion was reasonable and beyond the petitioner's control. Citing the above regulations, the director dismissed the motion on September 13, 2011.

The petitioner has now filed a timely appeal to the latest decision. The AAO will summarily dismiss the appeal.

The USCIS regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the latest Form I-290B, Notice of Appeal or Motion, the petitioner discusses his research and provides evidence of citation of his published work, in an effort to contest the November 2008 denial of his petition. The present appeal, however, is not an appeal of the November 2008 decision. Rather, the appeal concerns the director's most recent decision, issued in September 2011. That decision did not discuss the merits of the petitioner's research work. Rather, the sole basis for the most recent decision is that the petitioner's previous motion was untimely by more than two years.

The petitioner, on appeal, makes no effort to address, rebut, or overcome the issue that led to the dismissal of his August 2011 motion. Instead, he repeats, almost word for word, the statement he offered in that motion.

The petitioner's opportunity to contest the original denial of the petition was during the appeal period permitted under the regulations. The appeal process does not allow the petitioner unlimited or indefinite opportunities to dispute the denial over and over again until the desired result occurs, without regard for the petition's procedural history since that first denial. Before the AAO can give any consideration to the merits of the underlying petition, the petitioner must first establish that the director's subsequent decisions were in error. The petitioner cannot overcome the dismissal of his motion by filing a new appeal that seeks readjudication of the underlying petition, as though the intervening filings and decisions never happened.

Issues not briefed on appeal by a pro se litigant are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam). When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). In this instance, the petitioner, on appeal, does not contest or address the director's finding that the

August 2011 motion was untimely, and therefore failed to meet the requirements of a motion. The petitioner has, therefore, abandoned that issue.

The petitioner, in his latest appeal, does not address or contest the sole stated ground for the director's most recent decision (the late filing of the August 2011 motion). The petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. Therefore, the AAO must summarily dismiss the appeal.

ORDER: The appeal is dismissed.